

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JEFFERY L. CAMPBELL,

Petitioner,

v.

JAMES THATCHER,

Respondent.

Case No. C07-5315RBL

REPORT AND
RECOMMENDATION

**NOTED FOR:
August 31, 2007**

This habeas corpus action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636 (b)(1)(B) and Local Magistrates' Rules MJR 3 and MJR 4. Although petitioner attempts to file pursuant to 28 U.S.C. § 2244, he is challenging a state conviction and sentence. The petition is properly filed under 28 U.S.C. § 2254. Petitioner is challenges a 1980 conviction from Kitsap County. Petitioner was sentenced to ten years confinement. (Dkt. # 1, exhibit 1). On page seven of the petition petitioner indicates he has previously filed a Federal Habeas Corpus petition in this court concerning his conviction and sentence (Dkt. # 1, page 7).

The court entered an order to show cause as it appeared petitioner may be filing a second or successive petition (Dkt. # 5). In response, petitioner has filed a motion in this court asking that the

1 Ninth Circuit Court of Appeals grant him leave to proceed (Dkt. # 6). Petition also filed motions for
2 leave to amend and for a ruling reversing the state court decision not to accept his case for
3 discretionary review (Dkt # 7 and 8). The court concludes this is a second or successive petition and
4 should be transferred to the Ninth Circuit.

5 DISCUSSION

6 Ninth Circuit Rule 22-3 (a) states:

- 7 (a) **Application.** Any petitioner seeking leave to file a second or successive 2254
8 petition or 2255 motion in district court must seek leave under 28 U.S.C. §§
9 2244 or 2255. An original and five copies of the application must be filed
10 with the Clerk of the Court of Appeals. No filing fee is required. If a second
or successive petition or motion, or application for leave to file such a petition
or motion, is mistakenly submitted to the district court, **the district court**
shall refer it to the court of appeals.

11 (Emphasis added).

12 By his own admission the petitioner is filing a second petition. He has filed a motion asking
13 leave to proceed from the Ninth Circuit Court of Appeals. This case must be transferred to the Ninth
14 Circuit.

15 CONCLUSION

16 Based on the foregoing discussion, the Court should transfer this matter as a second or
17 successive petition and administratively close the file.

18 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the
19 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed.
20 R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of
21 appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule
22 72(b), the clerk is directed to set the matter for consideration on **August 31, 2007**, as noted in the
23 caption.

24 DATED this 13 day of August, 2007.

25
26
27 /S/ J. Kelley Arnold
J. Kelley Arnold
United States Magistrate Judge
28